

APR 15 2002

I HEREBY CERTIFY THAT THIS CORRESPONDENCE IS BEING DEPOSITED WITH THE UNITED STATES POSTAL SERVICE AS FIRST CLASS MAIL IN AN ENVELOPE ADDRESSED TO: ASSISTANT COMMISSIONER FOR PATENTS, WASHINGTON, D.C. 20231, ON THE DATE INDICATED BELOW.

BY:

Louisa D. Brown

Date:

April 8, 2002

**PATENT
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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re: Patent Application of : Group Art Unit: 1644
Christopher J. Horvath :
Application No.: 09/531,088 : Confirm. No.: 5277
Filed: March 17, 2000 : Examiner:
For: CD18-BINDING ANTIBODIES : Jessica Roarke, Ph.D.
AND USE THEREOF FOR :
INHIBITION AND ALLEVIATION : **Attorney Docket No.**
OF STENOSIS-RELATED : **10147-22**
SYMPTOMS AND DISORDERS : **(MBIO2000-131)**

**REQUEST FOR RECONSIDERATION OF
PETITION
PURSUANT TO 37 C.F.R. § 1.10(d)**

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OFFICE OF PETITIONS

The Applicant respectfully requests reconsideration of the Decision Dismissing Petition dated February 6, 2002 (Paper No. 7; hereafter, "the Decision"). The Decision responded to the petition filed by the Applicant on March 24, 2000 to have the date March 17, 2000 accorded as the filing date of the above-referenced U.S. Patent application, on account of an error or omission on the part of the U.S. Postal Service (hereafter, "the Petition"). This Request for Reconsideration is timely filed in view of it having been filed on April 8, 2002 (April 6 and 7, 2002 being a Saturday and Sunday), within two months from the mailing date of the Decision.

Remarks

In the Decision, the Office cites 37 C.F.R. § 1.10, including the provision that "[t]he date of deposit with the USPS is shown by the 'date-in' on the 'Express Mail' mailing label or other official USPS notation." The Applicant alleged occurrence of an

error or omission on the part of the USPS in the Petition. More specifically, the Applicant alleges that the USPS indicated the incorrect 'date-in' on the 'Express Mail' label for this application.

In considering the evidence submitted with the Petition, the Office cites two pieces of information that were not submitted. First, the Office indicates that no written statement from the Postmaster was submitted. Second, the Office indicates that there was no indication in the Petition regarding what the last scheduled pickup was for the 30th Street Post Office on March 17, 2000.

There is no requirement in the C.F.R., the M.P.E.P., or elsewhere that a written statement be obtained from the Postmaster explaining an alleged error or omission on the part of the USPS. The Applicant respectfully urges that the refusal of the Postmaster to take any action in this matter speaks for itself - that the USPS did not correct the alleged error or omission. The Applicant has fully explained the circumstances surrounding the alleged error or omission, and respectfully contends that any statement issued by the Postmaster or any other representative of the USPS is irrelevant to those circumstances. The Office should simply reconsider the Petition on the basis of the circumstances provided and the requirements of the C.F.R., and should not impose additional requirements that do not exist. For these reasons, the Applicant submits that lack of a written statement from the Postmaster of the 30th Street Post Office is irrelevant to reconsideration of the Petition. To the extent that omission of this written statement was considered in the Decision, such consideration was erroneous.

Submitted together with this Request is a Declaration of Gary D. Colby, indicating that on March 17 and 18, 2000, the 30th Street Post Office in Philadelphia, Pennsylvania was publicly known to be open 24 hours a day for receipt of items including Express Mail packages. The Applicant also believes that this fact was adequately (albeit implicitly) established in item 7 of the "Statement of Facts..." submitted together with the Petition. To the extent that the Decision relied on lack of an allegation that the 30th Street Post Office was open to receive Express Mail packages just before midnight on March 17, 2000, such reliance was erroneous.

The Applicant respectfully contends that the Petition adequately establishes that the Applicant and his representative took all actions that are required to

obtain a filing date of March 17, 2000. But for the inefficiency of the USPS, the attitude of an evidently spiteful employee of the USPS (see items 9-16 of the "Statement of Facts..." submitted with the Petition), or both, the USPS would properly have afforded the Express Mail package containing this application a filing date of March 17, 2000. Because the efficiency of the USPS and the attitude of its employees are beyond the control of the Applicant, and because the Applicant did everything required to obtain a filing date of March 17, 2000, the Applicant contends that this application should be afforded a filing date of March 17, 2000.

For the above reasons, the undersigned petitions that the above-referenced U.S. patent application be accorded the filing date **March 17, 2000**.

8 April 2002
(Date)

Respectfully submitted,
Christopher J. Horvath

BY: 

GARY D. COLBY, Ph.D., J.D.

Registration No. 40,961

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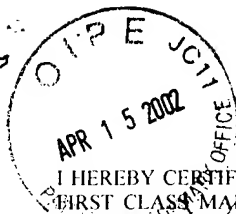
E-Mail: gcolby@akingump.com

Enclosures: Declaration of Gary D. Colby

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BY: Louisa Train Date: April 8, 2002

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DECLARATION OF GARY D. COLBY

I hereby declare as follows:

1. I am the same Gary D. Colby who is registered to practice before the U.S. Patent and Trademark Office (Registration Number 40,961).
2. On March 17 and 18, 2000, the United States Post Office at 30th Street in Philadelphia, Pennsylvania was publicly known to be open 24 hours for receipt of items including Express Mail packages.
3. I declare further that all statements made herein of my own knowledge are true and that all statements made on information and belief are believed to be true; and further, that these statements were made with the knowledge that willful false statements and the like so made are punishable by fine or imprisonment, or both, under Section 1001 of Title 18 of the United States Code and that such willful false statements may jeopardize the validity of the application or any patent issuing thereon.

Date: 8 April 2002

Gary D. Colby